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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,062	01/04/2002	Stephen A. Milks	8416-000008	5754
7590 01/22/2008				
W. R. Duke Taylor Harness, Dickey & Pierce, P.L.C P.O. Box 828 Bloomfield Hills, MI 48303				
			EXAMINER FREAY, CHARLES GRANT	
			ART UNIT 3746	PAPER NUMBER
			MAIL DATE 01/22/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**Office Action Summary**

Application No.

10/038,062

Applicant(s)

MILKS, STEPHEN A.

Examiner

Charles G. Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5,7-11,13-16 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10,11,13-16 and 19 is/are allowed.
- 6) ☒ Claim(s) 1,5,7 and 8 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This office action is in response to the amendment of November 20, 2007. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chui in view of 4000R and further in view of applicant's earlier patent ('769) and also Kottmann and McAvena as set forth in the previous office action. The examiner notes that to the degree disclosed the rigid casing of '769 will provide protection against damage as set forth in the statement of desired result newly added to claim 1.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chui in view of 4000R, ('769) and also in view of Kottmann and McAvena as applied to claim 1 above, and further in view of Schmider as set forth in the previous office action.

***Allowable Subject Matter***

Claims 10, 11, 13-16 and 19 are allowed.

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed November 20, 2007 have been fully considered but they are not persuasive. The applicant makes the following arguments: 1) that the examiner alleges that 4000R teaches a low profile motor and the brochure clearly does not disclose a low profile motor. 2) that in 4000R the cover retracts when rain is sensed by the fan and thus 4000R and '769 teach away from a rigid casing which seals the motor and provides protection against damage from external forces and well as creating a liquid impermeable seal enabling the device to be subjected to highly pressurized liquids. 3) that McAvena discloses a method of assembly and coating a motor to make it water proof and is not relevant to the claimed invention. And, 4) that the examiner has provided no specific reasoning for making the combination set forth.

The examiner disagrees.

With regards to the first argument what the examiner stated in the rejection was that in 4000R "the thickness of the assembly is 3.5 inches". This is the thickness from the top rounded portion of the dome to the lower part of the flange. As shown in the figure the motor must fit within this dimension and there is also a shaft and impeller

which must fit within this dimension so there are clear bounds placed on the thickness of the 4000R motor. 4000R also makes clear reference to '769 which teaches a low profile sealed motor having a thickness of approximately an inch as set forth in the invention. The examiner notes that to the degree disclosed the rigid casing of '769 will provide protection against damage as set forth in the statement of desired result newly added to claim 1. Clearly these two references make clear the sealed rigid low profile motor driven fan set forth in the claims.

With regards to the second argument the applicant sets forth that 4000R has a cover which retracts when rain is sensed and therefore teach away from the claimed invention. However, the 4000R brochure sets forth that the automatic opening and closing feature is an option. Furthermore, each of the references clearly set forth that the motor is a sealed motor. Therefore, a clear teaching is provided and consideration has been given in these references to the condition where the cover is left open and the motor must be sealed against rain or moisture. The references therefore do not teach away from such a device.

With regards to the third argument the examiner notes that as set forth in the rejection the limitation of the seal "enabling said air circulation device to be subjected to highly pressurized liquids for cleaning" is as intended use and the sealed motor of 4000R and '769 have the ability of performing the indeed use of sealing the motor but it does not discuss the degree or amount of sealing. While the applicant notes that coating of the various elements and the construction elements of McAvena he does not mention the spring loaded seal which was the object of McAvena referred to in the

rejection. McAvena discloses various means of sealing an electric motor against high pressure fluids for purposes such as cleaning and specifically teach a seal for such a purpose. Both of the 4000R and '769 references discuss sealing the motor and 4000R discusses cleaning of the motor. The use of a well known spring biased seal which provides a stronger seal against liquid would be obvious even to those who are not of ordinary skill in the art given the common understanding that water should not enter an electric motor.

With regards to the fourth argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, there are clear suggestions within the references which have been pointed out in the rejection regarding the importance of sealing the motor. Furthermore, to the degree disclosed, the cited references, and specifically the 4000R and the '769 references, clearly teach, are capable of performing the intended functions to the relative levels set forth by the claims, and provide motivation for making the proposed combinations.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

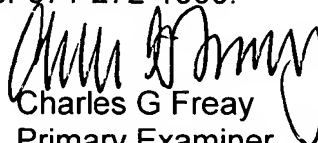
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
January 16, 2008